

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MARK LARSEN,

Appellant-Respondent

v.

UNION PACIFIC RAILROAD COMPANY.

Respondent-Appellant

DOCKET NUMBER WD78609 Consolidated with WD78622

DATE: AUGUST 23. 2016

Appeal From:

Circuit Court of Buchanan County, MO
The Honorable Randall R. Jackson, Judge

Appellate Judges:

Division One
Anthony Rex Gabbert, P.J., Thomas H. Newton, Alok Ahuja, JJ.

Attorneys:

Scott Bethune, Kansas City, MO,
Counsel for Appellant-Respondent

Attorneys:

Craig Michael Leff, Kansas City, MO
Counsel for Respondent-Appellant

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**MARK LARSEN, Appellant-Respondent, v.
UNION PACIFIC RAILROAD COMPANY,
Respondent-Appellant**

**WD78609 Consolidated with WD78622
Buchanan County**

Before Division One Judges: Anthony Rex Gabbert, P.J., Thomas H. Newton, Alok Ahuja, JJ.

Mark Larsen appeals the circuit court's grant of Union Pacific Railroad Company's Motion for New Trial and/or Review for Plain Error Based on the Discovery of Juror Nondisclosure. Larsen contends that the court erred in granting Union Pacific's motion for new trial alleging that: (1) there is no competent evidence that Juror LS intentionally failed to disclose his union membership in that it is unclear what Union Pacific was seeking in its *voir dire* question, was not established that Juror LS did not attempt to respond, and Larsen was prevented from adducing testimony of Juror LS regarding his understanding of the question; (2) Union Pacific's claim of juror nondisclosure was untimely in that it was made well after the deadline for raising a claim of error and encourages post-trial witch hunts; (3) the testimony of David A. Giles, Ph.D. is demonstrably not credible in that it is internally inconsistent and self-contradictory, and; (4) the alleged nondisclosure by Juror LS was not prejudicial in that his union membership had little connection to the case and no bearing on his qualifications to act as a juror. Union Pacific cross-appeals contending that the circuit court erred in denying Union Pacific's motions for directed verdict and judgment notwithstanding the verdict because Larsen failed to make a submissible case for negligence under FELA.

AFFIRMED

Division One holds:

- (1) The circuit court did not abuse its discretion in granting Union Pacific's motion for new trial in that the record supports the court's conclusion that Juror LS intentionally failed to disclose his union membership.
- (2) The circuit court did not abuse its discretion in granting Union Pacific's motion for new trial in that the record supports the court's determination that plain error review was appropriate under Rule 78.08.
- (3) The circuit court did not abuse its discretion in granting Union Pacific's motion for new trial in that the record supports the court's credibility determinations.

- (4) The circuit court did not abuse its discretion in granting Union Pacific's motion for new trial in that the record supports the court's finding that prejudice resulted from Juror LS's intentional nondisclosure.
- (5) The circuit court did not err in denying Union Pacific's motions for directed verdict and judgment notwithstanding the verdict as Larsen made a submissible case for negligence under FELA.

Opinion by Anthony Rex Gabbert, Judge

Date: August 23, 2016

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
